Supreme Court, U. S.
FILED
APR 19 1978
MICHAEL RODAK, JR., CLERK

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. 77-1496

WILLIAM CHARLES HOUSER,
d/b/a HOUSER AUTOMOTIVE,

Petitioner,

v.

DISTRICT NO. 9, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS AND JOSEPH M. COINTIN, R. B. WYNNE, JR., REV. MSGR. CARL C. POELKER, FRED SPECKMAN, EDGAR M. HAYWARD, TRUSTEES OF DISTRICT 9, I.A. of M. and A.W., PENSION TRUST AND WELFARE ASSOCIATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI
To The United States Court Of Appeals
For The Seventh Circuit

GERALD TOCKMAN
706 Chestnut, Suite 1010
St. Louis, Missouri 63101
(314)241-8909
Attorney for Petitioner

St. Louis Law Printing Co., Inc., 812 Olive Street 63101 314-231-4477

TABLE OF CONTENTS

	Page
OPINIONS BELOW	2
JURISDICTION	2
QUESTIONS PRESENTED	2
STATUTES INVOLVED	3
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	8
I. The Decision Of The Court Of Appeals Is In Conflict With Both The Statutory Scheme Of The National Labor Relations Act And Applicable Decisions Of This Court	8
II. The Decision Of The Court Of Appeals Presents Important Questions Of Federal Law Which Should Be Decided By This Court	12
CONCLUSION	14

AUTHORITIES CITED

Page

CASES:

Balanyi v. Local 1031, IBEW, 374 F.2d 723 (7th Cir. 1967) 13

Bayside Enterprises, Inc. v. NLRB, 429 U.S. 298 (1977) 11

Fibreboard Paper Products v. NLRB, 379 U.S. 203 (1964) 9

H. J. Heinz v. NLRB, 311 U.S. 514 (1941) 10

International Association of Machinists v. NLRB, 311 U.S. 72 (1940), reh. denied, 311 U.S. 729 (1941) 9

Mayer v. Ordman, 391 F.2d 889 (6th Cir. 1968), cert. denied, 393 U.S. 925 (1968) 13

Monument Printing and Publishing Co., 231 NLRB No. 105, 96 LRRM 1177 (1977) 10

Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41 (1938) 9, 13

NLRB v. Boeing Co., 412 U.S. 67 (1977) 11

NLRB v. Erie Resistor Corp., 373 U.S. 221 (1963) 11

NLRB v. Gissel Packing Co., 395 U.S. 575 (1969) 9

NLRB v. J. H. Rutter-Rex Mfg. Co., 396 U.S. 258 (1969) 9

Page

NLRB v. Link-Belt Co., 311 U.S. 584 (1941) 9

NLRB v. Mackay Radio and Tel. Co., 304 U.S. 333 (1938) 9

NLRB v. Oil, Chemical and Atomic Workers, 476 F.2d 1031 (1st Cir. 1973) 13

NLRB v. Pennsylvania Greyhound Lines, 303 U.S. 261 (1938) 9

NLRB v. Pipefitters Local No. 638, 429 U.S. 507 (1977) 11

NLRB v. Sears, Roebuck and Co., 421 U.S. 132 (1975) 9, 13

NLRB v. Seven-Up Bottling Co., 344 U.S. 344 (1953) 9

NLRB v. Strong, 393 U.S. 357 (1969) . . 10

NLRB v. United Insurance Co. of America, 390 U.S. 254 (1968) 11

NLRB v. United Mine Workers, 355 U.S. 453 (1958) 9

Phelps Dodge Corp. v. NLRB, 313 U.S. 177 (1941) 9

Saez v. Goslee, 463 F.2d 214 (1st Cir. 1972) 13

Vaca v. Sipes, 386 U.S. 171 (1967) . . . 9, 13

Virginia Electric and Power Co., 319 U.S. 533 (1943) 9

STATUTES:

	Page
28 U.S.C. §1254(1)	2
29 U.S.C. §151, et. seq.	3
29 U.S.C. §153(d)	9
29 U.S.C. §158(a)(1)	4,5,7, 8,10
29 U.S.C. §158(a)(5)	4,5,7, 8,10
29 U.S.C. §160(a)	9
29 U.S.C. §160(c)	9
29 U.S.C. §160(d)	11
29 U.S.C. §160(e)	10,12, 13
29 U.S.C. §160(f)	12,13
29 U.S.C. §185	2,3,11, 12

INDEX TO APPENDICES

	Page
Letter Dated November 7, 1974 From The Regional Director Of The National Labor Relations Board, Region 14 To District No. 9, International Association Of Machinists And Aerospace Workers, AFL-CIO	A-1
Letter Dated November 15, 1974 From Forrest W. Brandon, District 9, International Association of Machinists And Aerospace Workers, AFL-CIO To General Counsel, Office Of Appeals, National Labor Relations Board	A-4
Letter Dated December 5, 1974 From General Counsel, Office Of Appeals, National Labor Relations Board To Forrest W. Brandon, District 9, International Association of Machinists And Aerospace Workers, AFL-CIO	A-6
Letter Dated January 24, 1977 From The Hon. J. Waldo Ackerman To John F. Goffstein And Gerald Tockman.	A-7
Order Of The United States District Court For The Southern District Of Illinois, Southern Division Entered And Filed February 15, 1977	A-8
Letter Dated March 14, 1977 From The Hon. J. Waldo Ackerman To John H. Goffstein and Gerald Tockman.	A-10

Page

Modified Order Of The United States District Court For The Southern District Of Illinois, Southern Division Entered And Filed March 23, 1977. . . . . A-12

Order Of The United States Court Of Appeals For The Seventh Circuit, Entered And Filed January 19, 1978. . . . A-13

Unpublished Per Curiam Order Of The United States Court Of Appeals For The Seventh Circuit, Entered And Filed January 19, 1978. . . . . A-21

Statutes Involved. A-23

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1977

No. . . . . .

WILLIAM CHARLES HOUSER,
d/b/a HOUSER AUTOMOTIVE,

Petitioner,

v.

DISTRICT NO. 9, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS AND JOSEPH M. COINTIN, R. B. WYNNE, JR., REV. MSGR. CARL C. POELKER, FRED SPECKMAN, EDGAR M. HAYWARD, TRUSTEES OF DISTRICT 9, I.A. of M. and A.W., PENSION TRUST AND WELFARE ASSOCIATION,

Respondents.

PETITION FOR WRIT OF CERTIORARI
To The United States Court Of Appeals
For The Seventh Circuit

Petitioner, William Charles Houser d/b/a Houser Automotive, seeks a writ of certiorari to review the decision of the United States Court of Appeals for the Seventh Circuit entered in this proceeding on January 19, 1978.

OPINIONS BELOW

The unreported Order of the Court of Appeals affirming the decision of the United States District Court for the Southern District of Illinois, Southern Division is reproduced at Appendix A-13 and A-21. The unreported decision and order of the District Court is reproduced at Appendix A-7. The unreported modified decision and order of the District Court is reproduced at Appendix A-10.

JURISDICTION

The Order of the Court of Appeals was entered on January 19, 1978. This petition for writ of certiorari was filed within ninety days of that date. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTIONS PRESENTED

(1) Whether an Order of the National Labor Relations Board remedying an unfair labor practice, as finally and unreviewably interpreted and determined by the General Counsel of the National Labor Relations Board, must be considered final and binding, or at least afforded substantial weight, in a proceeding in the courts pursuant to 29 U.S.C. §185 involving the identical operative facts as were before the National Labor Relations Board and its General Counsel.

(2) Whether a determination by the General Counsel of the National Labor Relations Board not to issue an unfair labor practice complaint, which determination is final and not subject to review, must be considered final and binding, or at least afforded substantial weight, in a proceeding in the courts

pursuant to 29 U.S.C. §185 involving the identical operative facts as were before the General Counsel.

(3) Whether 29 U.S.C. §185 may be utilized as a collateral review mechanism to review a Decision and Order of the National Labor Relations Board remedying an unfair labor practice outside the review procedure provided in 29 U.S.C. §§160(e) and (f), in a case involving identical operative facts as were before the National Labor Relations Board.

(4) Whether 29 U.S.C. §185 may be utilized as a collateral review mechanism to review a determination of the General Counsel not to issue a complaint upon an unfair labor practice charge, in a case involving identical operative facts as were before the General Counsel.

STATUTES INVOLVED

The relevant provisions of the National Labor Relations Act, as amended, 61 Stat. 136, 73 Stat. 519, 29 U.S.C. §151, et. seq., are set forth at Appendix A-23.

STATEMENT OF THE CASE

Respondents, District No. 9, International Association of Machinists and Aerospace Workers (herein "Union") and the Trustees of the District 9, I.A. of M. and A.W. Pension Trust and Welfare Association instituted this action in the District Court below under the provisions of 29 U.S.C. §185 alleging that Petitioner had violated the terms of two successive collective bargaining agreements, the 1970-1973 Standard Automotive Agreement and the 1973-1976 Standard Automotive Agreement, by failing and refusing to make payments into the Pension Trust and

Welfare Association. Petitioner answered, inter alia, that he was not liable for the amounts alleged to be due and owing, and that he had neither entered into nor was bound by the 1973-1976 Standard Automotive Agreement.

Petitioner and Respondents were parties to the 1970-1973 Standard Automotive Agreement until its expiration on July 31, 1973. Petitioner, although not a member of the area-wide automotive employer association, executed a "letter-agreement" on August 8, 1973 which stated that Petitioner would implement a thirty-five cent (35¢) per hour wage increase, effective August 1, 1973, and would ". . . abide by any settlement made under the Automotive Dealer Agreement . . . ." The Union and the employer association thereafter executed a new collective bargaining agreement (the 1973-1976 Standard Automotive Agreement).

The National Labor Relations Board (herein "Board"), acting upon an unfair labor practice charge filed by the Union, issued a Complaint (Case No. 14-CA-7600) alleging that Petitioner had refused to bargain in good faith with the Union by unilaterally dealing with unit employees in violation of Sections 8(a)(1) and (5) of the National Labor Relations Act, as amended (herein "Act"), 29 U.S.C. §§158(a)(1) and (5). 1/ Petitioner claimed, inter alia, that he had an objective good faith doubt as to the Union's majority status.

1/ A similar Complaint was issued upon charges filed by the Automotive, Petroleum and Allied Trades Local Union No. 971, affiliated with the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, not herein relevant.

The Board found that the presumption of the Union's majority status, which followed from prior contractual relations, remained unrebutted and that Petitioner had refused to bargain with the Union in violation of Sections 8(a)(1) and (5) of the Act (29 U.S.C. §§158(a)(1) and (5)). The Board stated:

> "Most significant, if not determinative, on the issue of good-faith doubt is respondent's voluntary acceptance and signing of the 'letter-agreement' presented to it on August 8, 1973 — only a week after the last contract expired. Respondent thereby undertook to 'continue to operate under the provisions of the [expired] 1970-1973 Agreement' with Machinists. It also agreed 'to abide by any settlement' to be reached by Machinists and the Employer Association in pending negotiations and, in the interim, to put in effect a 35-cent across-the-board hourly increase — which it implemented faithfully. These actions do not depict an employer in doubt as to the Union's majority status. The presumption flowing from its past contractual relations with Machinists was enhanced by the execution of the new agreement. Even if previously quiescent, Respondent's action operated not only formally to renew or extend, but also to breathe new life into the technically expiring formal contractual relationship."

The Board further stated, in footnote 29:

"Contrary to Respondent's contention, the letter-agreement is more than an 'interim wage adjustment' and 'agreement to agree in the future.' The instrument expressly bound the parties to follow and apply the contract to be concluded by the Union and Employer Association — a not unusual procedure in dealings with 'independents' like Respondent. In any event, Respondent's contention that the letter-agreement is not 'enforceable' under 'basic contract law' is unsound. It has, moreover, repeatedly been pointed out that the strict rules governing 'ordinary contracts' do not necessarily apply to collective labor agreements. John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543, 550."

The Board ordered Petitioner "[u]pon request, to meet and bargain with the . . . Union as the exclusive representative of all employees in the appropriate bargaining unit, and embody in a signed agreement any understanding reached."2/

The Union requested Petitioner to meet with it to discuss the application and administration of the "existing agreement", the 1973-1976 Standard Automotive Agreement. Petitioner expressed his willingness to meet and bargain with the Union, but denied that he was bound by the 1973-1976 Standard Automotive Agreement under the terms of the Board's affirmative order. The

---

2/ No exceptions having been filed, the Decision and Order of the Administrative Law Judge was adopted by the Board.

Union then filed an unfair labor practice charge with the Board alleging that there was a collective bargaining agreement in effect between Petitioner and the Union, and that Petitioner had refused to meet with the Union to discuss its application and administration, in violation of 29 U.S.C. Sections 158(a)(1) and (5).

The Regional Director of the Board, Region 14, refused to issue a Complaint (Appendix A-1), concluding that Petitioner had not refused to bargain with the Union, as the Union had not requested any negotiations, and because

> ". . . the Order in Case No. 14-CA-7600 did not require the Employer to either execute or implement the new association contract . . . ." Appendix A-3.

The Union appealed the Regional Director's determination to the General Counsel, arguing that Petitioner was in fact bound to follow and apply the 1973-1976 Standard Automotive Agreement, and requested that either a complaint be issued or that the Order of the Board be clarified. Appendix A-4. The General Counsel affirmed the decision of the Regional Director. Appendix A-6.

The District Court concluded that Petitioner was bound by the terms and conditions of the 1973-1976 Standard Automotive Agreement, and entered summary judgment for Respondents against Petitioner. Appendix A-8; A-11. Petitioner appealed to the Court of Appeals, which affirmed the decision of the District Court. Appendix A-13; A-21. The Court of Appeals held:

> "While we agree that the original Board order did not require execution of the 1973-1976 Agreement, we

conclude . . . that this is because the Board viewed the Company as already bound by that Agreement by its act of signing the letter-agreement of August 8, 1973. Insofar as the letter of the Regional Director indicates that the Company is not bound by the 1973-1976 Agreement, we decline to accept this interpretation. In any case, neither the Board nor the Regional Director were squarely faced with the issue presented here. Therefore, upon independent determination, we hold that the defendant is bound by the terms of the 1973-1976 Standard Automotive Agreement." Appendix A-18, A-19.

REASONS FOR GRANTING THE WRIT

I. The Decision Of The Court Of Appeals Is In Conflict With Both The Statutory Scheme Of The National Labor Relations Act And Applicable Decisions Of This Court.

In determining the pivotal issue in this case, whether Petitioner was bound by the terms and conditions of the 1973-1976 Standard Automotive Agreement, the Court of Appeals improperly invaded the statutorily created and judicially defined province of the Board to act upon and remedy the commission of an unfair labor practice, specifically, a refusal to bargain by an employer in violation of 29 U.S.C. §§158(a)(1) and (5). By holding that Petitioner was in fact bound by that Agreement, contrary to the explicit terms of the Board's affirmative Order and the findings of the General Counsel in refusing to issue a Complaint upon operative facts identical to those involved in the instant

litigation, the Court of Appeals radically departed from both the scheme of administration of the Act and applicable decisions of this Court.

In structuring the Act, Congress entrusted the Board with the task of remedying the effects of unfair labor practices. See, 29 U.S.C. §§160(a) and (c). It has long been established that the Board, not the courts, is to determine how the effects of an unfair labor practice are to be expunged. This is a matter committed to agency discretion, subject only to limited judicial review. See, NLRB v. J. H. Rutter-Rex Mfg. Co., 396 U.S. 258, 263 (1969); NLRB v. Gissel Packing Co., 395 U.S. 575, 612 n.32 (1969); Fibreboard Paper Products Corp. v. NLRB, 379 U.S. 203, 216 (1964); NLRB v. United Mine Workers, 355 U.S. 453 (1958); NLRB v. Seven-Up Bottling Co., 344 U.S. 344, 346 (1953); Virginia Electric and Power Co. v. NLRB, 319 U.S. 533, 539-540 (1943); Phelps Dodge Corp. v. NLRB, 313 U.S. 177, 194 (1941); NLRB v. Link-Belt Co., 311 U.S. 584, 600 (1941); International Association of Machinists v. NLRB, 311 U.S. 72, 82 (1940), reh. denied, 311 U.S. 729 (1941); NLRB v. Mackay Radio and Tel. Co., 304 U.S. 333, 348 (1938); NLRB v. Pennsylvania Greyhound Lines, 303 U.S. 261, 271 (1938).

It is also firmly established that "the Board's General Counsel has unreviewable discretion to refuse to institute an unfair labor practice complaint." Vaca v. Sipes, 386 U.S. 171, 182 (1967). See also, NLRB v. Sears, Roebuck and Co., 421 U.S. 132, 138-139 (1975); Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41 (1938); 29 U.S.C. §153(d).

Prior to the institution of this litigation, the General Counsel reviewed the Decision and Order of the Board, upon the unfair labor practice

charge filed by the Union alleging that Petitioner had violated 29 U.S.C. §§158(a)(1) and (5) by refusing to meet with the Union to discuss the application and administration of a collective bargaining agreement to which Petitioner was bound, the 1973-1976 Standard Automotive Agreement. The Regional Director of the Board, Region 14, refused to issue a complaint, finding that the Board, as part of its remedy, had not required Petitioner to either execute or implement that Agreement. The General Counsel of the Board, upon the appeal of the Union, adopted the conclusion reached by the Regional Director and in the exercise of his statutory discretion, refused to issue a complaint.

Had the General Counsel drawn the conclusion that the Board had in fact held that Petitioner was required to implement and execute the 1973-1976 Standard Automotive Agreement, 3/ the General Counsel could have exercised any one of three available statutory options: (1) issued an unfair labor practice complaint, charging Petitioner with violating 29 U.S.C. §§158(a)(1) and (5) for refusing to execute the 1973-1976 Standard Automotive Agreement; (2) petitioned the Court of Appeals for enforcement of the Order of the Board, pursuant to 29 U.S.C. §160(e); or, (3) moved to modify or set aside the Order of the Board, pursuant to

---

3/ Requiring a person to implement and execute a collective bargaining agreement to which he has agreed is well within the power of the Board. See, NLRB v. Strong, 393 U.S. 357 (1969); H. J. Heinz v. NLRB, 311 U.S. 514 (1941); Monument Printing and Publishing Co., 231 NLRB No. 105, 96 LRRM 1177 (1977).

29 U.S.C. §160(d). Instead, the General Counsel held that Petitioner was not bound by the terms and conditions of the 1973-1976 Standard Automotive Agreement, precisely the conclusion rejected by the Court of Appeals.

The Court of Appeals, upon "independent determination", improperly entered the exclusive statutory province of the Board to remedy unfair labor practices, and "declined" to accept the heretofore unreviewable determination of the General Counsel not to issue an unfair labor practice complaint. In addition, the Court of Appeals failed to defer to the determinations of the Board, but instead improperly substituted its own determination. See, NLRB v. Pipefitters Local No. 638, 429 U.S. 507, 528 (1977); Bayside Enterprises, Inc. v. NLRB, 429 U.S. 298, 303-304 (1977); NLRB v. Boeing Co., 412 U.S. 67, 75 (1973); NLRB v. United Insurance Co. of America, 390 U.S. 254, 260 (1968); NLRB v. Erie Resistor Corp., 373 U.S. 221, 236 (1963).

The decision of the Court of Appeals is clearly contrary to both the statutory scheme of the Act and applicable decisions of this Court. Failure to review the decision of the Court of Appeals will result in the sanctioning of a radical departure from established judicial deferral to the expertise and discretion of the Board. Now, through the vehicle of a 29 U.S.C. §185 litigation, a charging party who disputes the order of the Board remedying a refusal to bargain can go to the courts with the identical operative facts as were considered by the Board and obtain a contrary ruling. Such a course of proceeding has never been and cannot now be sanctioned.

II. The Decision Of The Court Of Appeals Presents Important Questions Of Federal Law Which Should Be Decided By This Court.

The effect of the decision of the Court of Appeals is to create, through a 29 U.S.C. §185 action, a collateral procedure whereby a decision and Order of the Board remedying an employer's refusal to bargain, and an exercise of discretion by the General Counsel of the Board in refusing to issue an unfair labor complaint, may be reviewed in the courts. Upon identical operative facts as were before the Board and the General Counsel, the Court of Appeals reviewed the proceedings before the Board and the General Counsel and substituted its judgment upon "independent determination" over matters properly reserved for agency discretion.

These important questions in the administration of the Act, viz, to what extent a 29 U.S.C. §185 litigation may be utilized as a collateral review mechanism to review a decision and order of the Board remedying an unfair labor practice, and a refusal to issue an unfair labor practice complaint by the General Counsel, have never before been considered by this Court, but should now be decided.

The Act only contemplates direct review of a decision and order of the Board through 29 U.S.C. §§160(e) or (f). Here, neither the Board nor the Union exercised the available review procedures. The Board, both through its remedial order and through the General Counsel, held that Petitioner was not bound by the terms and conditions of the 1973-1976 Standard Automotive Agreement, and did not seek enforcement of its Order through 29 U.S.C.

§160(e). The Union, as a "person aggrieved by a final order of the Board . . .", 4/ did not utilize the only statutory review available, 29 U.S.C. §160(f). See, NLRB v. Oil, Chemical and Atomic Workers, 476 F.2d 1031, 1033-1034 (1st Cir. 1973). Instead, collateral review of both the decision of the Board and the refusal of the General Counsel to issue a complaint was sought and afforded. The Court of Appeals, by disregarding the rulings of both the Board and the General Counsel, sanctioned this radical departure from the statutory scheme.

That no review may be afforded the General Counsel's refusal to issue an unfair labor practice complaint, see, NLRB v. Sears, Roebuck and Co., supra; Vaca v. Sipes, supra; Myers v. Bethlehem Shipbuilding Corp., 303 U.S. 41 (1938), has been consistently followed and applied by the courts. See, e.g., Saez v. Goslee, 463 F.2d 214 (1st Cir. 1972); Mayer v. Ordman, 391 F.2d 889 (6th Cir. 1968), cert. denied, 393 U.S. 925 (1968); Balanyi v. Local 1031, IBEW, 374 F.2d 723 (7th Cir. 1967). The collateral review afforded by the Court of Appeals of the General Counsel's heretofore unreviewable discretionary decision, in a factually identical context, is a clearly improper departure from both established judicial precedent and statutory mandates.

Failing a dispositive declaration by this Court of the propriety of the type of collateral review afforded by operation of the Court of Appeals' decision, an avenue of review, uncontemplated by the Act and heretofore judicially foreclosed, will have been opened. It is submitted that only Congress can provide the

---

4/ 29 U.S.C. §160(f).

types of changes in the statutory scheme implemented by the Court of Appeals. Nevertheless, if such an avenue of review is to be afforded, it should only be done through articulated rationale, rather than through the opinion of the Court of Appeals which failed to recognize and deal with the issue.

CONCLUSION

Wherefore, for the foregoing reasons, the instant petition for writ of certiorari should be granted.

Respectfully submitted,

GERALD TOCKMAN
706 Chestnut, Suite 1010
St. Louis, Missouri 63101
(314)241-8909
Attorney for Petitioner

APPENDIX

NATIONAL LABOR RELATIONS BOARD
REGION 14
Room 448, 210 North 12th Boulevard
St. Louis, Missouri 63101

November 7, 1974

Re: Houser Automotive
Case No. 14-CA-8205

District No. 9 International
Association of Machinists and
Aerospace Workers, AFL-CIO
12365 St. Charles Rock Road
Bridgeton, Missouri 63044

Attn: Forrest W. Brandon, Grand
Lodge Representative

Gentlemen:

The above-captioned case charging a violation under Section 8 of the National Labor Relations Act, as amended has been carefully investigated and considered.

As a result of the investigation, it appears there is insufficient evidence that Houser Automotive has refused to bargain with District 9, International Association of Machinists and Aerospace Workers, AFL-CIO, by refusing to meet with District 9 representatives for the purpose of discussing the application and administration of a collective-bargaining agreement presently in effect between Houser Automotive and District 9, in violation of Section 8(a)(1) and (5) of the Act, as alleged. The investigation disclosed that Houser Automotive was signatory to the standard contract between District 9 and the Greater St. Louis Automotive Association, Inc. and St. Clair-Madison Automotive Association, Inc. covering the period from 1970,

through 1973, which expired on July 31, 1973. The investigation also disclosed that on August 8, 1973, District 9 requested and the Employer signed a "letter of agreement" pending finalization of a new standard agreement between the Association and District 9. Thereafter, on September 25, 1973, District 9 filed unfair labor practice charges against Houser Automotive in Case No. 14-CA-7600 alleging that Houser Automotive refused to bargain in good faith with District 9. A complaint issued and a hearing was held before Administrative Law Judge Samuel Singer on December 19, 1973, and January 15, 16, 1974. Prior to the hearing, the above-referred to Employer Associations and the Union executed a new contract effective August 1, 1973 to July 31, 1976. During the unfair labor practice hearing, the "letter of agreement" was litigated by the parties and a new Association contract was placed in evidence. Administrative Law Judge Singer issued his Decision dated March 29, 1974, wherein Houser Automotive was required to bargain in good faith with District 9, but as part of the remedy, the Employer was not required to execute or to implement the new Association contract. No exceptions as provided by Section 102.46 of the Board's Rules and Regulations was filed by any party to the proceeding and on April 30, 1974, the Board adopted the Administrative Law Judge's Decision.

By letter dated May 1, 1974, the Union, District 9, requested a meeting with the Employer in order to discuss the new Association agreement which agreement is applicable to Houser's employees in accord with the "letter of agreement." By letter dated May 7, 1974, the Employer advised the Union that there was no agreement in effect but that it would negotiate with the Union for a collective-bargaining agreement, as required by the above-referred to Board Order. The Union has not requested such negotiations to date.

In these circumstances, as the Order in Case No. 14-CA-7600 did not require the Employer to either execute or to implement the new Association contract, the Employer's refusal to now do so is not violative of the Act. Accordingly, further proceedings are not warranted at this time, and I am, therefore, refusing to issue complaint in this matter.

Pursuant to the National Labor Relations Board Rules and Regulations, you may obtain a review of this action by filing an appeal with the General Counsel addressed to the Office of Appeals, National Labor Relations Board, Washington, D. C. 20570 and a copy with me. This appeal must contain a complete statement setting forth the facts and reasons upon which it is based. The appeal must be received by the General Counsel in Washington, D. C., by the close of business on November 20, 1974. Upon good cause shown, however, the General Counsel may grant special permission for a longer period within which to file. Any request for extension of time must be submitted to the Office of Appeals in Washington, and a copy of any such request should be submitted to me.

If you file an appeal, please complete the notice forms I have enclosed with this letter and send one copy of the form to each of the other parties. Their names and addresses are listed below. The notice forms should be mailed at the same time you file the appeal, but mailing the notice forms does not relieve you of the necessity for filing the appeal itself with the General Counsel and a copy of the appeal with the Regional Director within the time stated above.

Very truly yours,
/s/ Joseph H. Solien
Joseph H. Solien
Regional Director

12365 St. Charles Rock Rd.
Bridgeton, Mo. 63044
November 15, 1974

General Counsel
Office of Appeals
Washington, D. C. 20570

Re: HOUSER AUTOMOTIVE
Case No. 14-CA-8205

Gentlemen:

Comes now District No. 9, International Association of Machinists and Aerospace Workers, AFL-CIO, and files this request for review of the Regional Director's refusal to issue complaint in Houser Automotive, Case No. 14-CA-8205, in his letter of November 7, 1974.

REASONS FOR REQUEST

Administrative Law Judge Samuel Singer in his decision issued March 29, 1974, in the case of WILLIAM CHARLES HOUSER, d/b/a HOUSER AUTOMOTIVE and AUTOMOTIVE, PETROLEUM AND ALLIED TRADES LOCAL UNION NO. 971, affiliated with INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS, WAREHOUSEMEN AND HELPERS OF AMERICA and DISTRICT NO. 9, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO, Case Nos. 14-CA-7594 and 14-CA-7600, specifically stated on page 17 beginning with line 34 of his decision: "Contrary to Respondent's contention, the letter-agreement is more than an "interim wage adjustment" and "agreement to agree in the future." The instrument expressly bound the parties to follow and apply the contract to be concluded by the Union and Employer Association--a not unusual procedure in dealings with "independents' like Respondent."

Since Judge Singer's decision was accepted by the Board as its Decision and Order, it is the position of the Union that the agreement between Houser Automotive and District No. 9, International Association of Machinists and Aerospace Workers, AFL-CIO, as referred to in Judge Singer's decision is a valid agreement and continues to be in force and effect between the parties even though Judge Singer did not specifically mention the existing agreement in his standard "form" bargaining order.

District No. 9, International Association of Machinists and Aerospace Workers, AFL-CIO, respectfully requests that a complete investigation of the entire record in the subject case be done and that the Regional Director be reversed in his refusal to issue complaint so that a hearing can be conducted before an administrative law judge or that Administrative Law Judge Samuel Singer might be allowed to issue a clarification of his decision in Case Nos. 14-CA-7594 and 14-CA-7600.

Respectfully submitted,
/s/Forrest W. Brandon
Forrest W. Brandon
Grand Lodge Representative, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, AFL-CIO

[Certificate of Service]

NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D. C. 20570

December 5, 1974

Re: Houser Automotive
Case No. 14-CA-8205

Mr. Forrest W. Brandon
Grand Lodge Representative
International Assn. of Machinists
& Aerospace Workers, Dist. No. 9
Machinists Building
12365 St. Charles Rock Road
Bridgeton, Missouri 63044

Dear Mr. Brandon:

Due consideration has been given to your appeal from the Regional Director's refusal to issue complaint based on your 8(a)(1) and (5) charge filed October 18, 1974, alleging that the Company had unlawfully refused to meet with the Union for the purpose of discussing the application and administration of a collective bargaining agreement currently in effect.

The appeal is denied substantially for the reasons set forth in the Regional Director's letter of November 7, 1974.

Very truly yours,
Peter G. Nash
General Counsel

By /s/ Ronald M. Slatkin
Ronald M. Slatkin
Acting Director,
Office of Appeals

JUDGES CHAMBERS
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
ROOM 319, FEDERAL BUILDING
SPRINGFIELD, ILLINOIS 62705

January 24, 1977

Mr. John F. Goffstein
Bartley, Goffstein, Bollato
and Lange
130 South Bemiston Avenue
Clayton, Missouri 63105

Mr. Gerald Tockman
Attorney at Law
706 Chestnut Street, Suite 1010
St. Louis, Missouri 63101

Gentlemen:

Re: District #9, IAM, v. Houser Automotive,
A-Civ-75-8

I have carefully reviewed the pleadings and your briefs in connection with cross motions for summary judgment and the following is in response thereto.

In my opinion the plaintiff is clearly entitled to summary judgment and the defendant is not entitled to prevail on its counterclaim. Under these circumstances the oral arguments set for February 1, 1977, are cancelled.

Counsel for plaintiff is directed to prepare an appropriate order.

Sincerely,
/s/ J. Waldo Ackerman
United States
District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
SOUTHERN DIVISION

DISTRICT NO. 9, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS, et al.,	)	
Plaintiffs,	)	
vs.	)	No. A-CIV-75-8
WILLIAM CHARLES HOUSER, d/b/a HOUSER AUTOMOTIVE,	)	
Defendant.	)	

ORDER

After carefully considering the pleadings, motions, memorandums, affidavits and other documents filed in the above-entitled case, the Court issues the following Order:

1. The Court finds that there is no dispute as to any material fact.

2. The Court determines that the Plaintiffs are entitled to summary judgment as a matter of law.

3. The Court finds that the relevant collective bargaining agreement obligates Defendant to pay Plaintiffs' attorneys fees in an amount of not less than 33-1/3% of the judgment herein granted.

WHEREFORE,

4. The Court grants Plaintiffs' Motion for Summary Judgment, denies Defendant's Motion for

Summary Judgment and dismisses Defendant's Counterclaim with prejudice.

5. The Court awards Plaintiffs $13,853.40 consisting of $8,190.40 Pension Trust contributions owed by the Defendant and $5,663.00 consisting of Health and Welfare contributions owed by Defendant.

6. The Court awards interest at a rate of 6% accruing annually from August 1, 1973 and continuing to the date of payment on the total amount awarded in paragraph five (5) of this Order ($13,853.40).

7. In addition to the amounts awarded in paragraphs five (5) and six (6), the Court awards to Plaintiffs and assesses against Defendant, Plaintiffs' attorneys fees in the amount of $4,617.80, said amount representing one-third of the principal amount of the judgment granted herein.

8. The Court assesses all costs of the action against Defendant.

So Ordered:
/s/ Judge J. Waldo Ackerman
Judge J. Waldo Ackerman

Dated: 2-15-77

JUDGES CHAMBERS
UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
ROOM 319, FEDERAL BUILDING
SPRINGFIELD, ILLINOIS 62705

March 14, 1977

Mr. John H. Goffstein
Bartley, Goffstein, Bollato
and Lange
130 South Bemiston Avenue
Clayton, Missouri 63105

Mr. Gerald Tockman
706 Chestnut Street
St. Louis, Missouri 63101

Gentlemen:

Re: District No. 9, International Association of Machinists and Aerospace Workers, et al., v. William Charles Houser, A-Civ-75-8

I have considered the motion of the defendant to amend the judgment together with the memoranda submitted in support and in opposition thereto.

I will deny the motion to amend the judgment except as to those matters consented to by the plaintiffs.

Attorney for plaintiffs is requested to prepare an amended judgment order accordingly.

Sincerely,
/s/ J. Waldo Ackerman
J. Waldo Ackerman
United States District Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF ILLINOIS
SOUTHERN DIVISION

DISTRICT NO. 9, INTER-NATIONAL ASSOCIATION OF MACHINISTS AND AERO-SPACE WORKERS, et al.,	)	
Plaintiffs,	)	
vs.	)	No. A-Civ-75-8
WILLIAM CHARLES HOUSER, d/b/a HOUSER AUTOMOTIVE,	)	
Defendant.	)	

ORDER

After carefully considering the pleadings, motions, memorandums, affidavits and other documents filed in the above-entitled case, the Court issues the following Order:

1. The Court finds that there is no dispute as to any material fact.

2. The Court determines that the Plaintiffs are entitled to summary judgment as a matter of law.

3. The Court finds that the relevant collective bargaining agreement obligates Defendant to pay Plaintiffs' attorneys fees in an amount of not less than 33-1/3% of the judgment herein granted.

WHEREFORE,

4. The Court grants Plaintiffs' Motion for Summary Judgment, denies Defendant's Motion for

Summary Judgment and dismisses Defendant's Counterclaim with prejudice.

5. The Court awards Plaintiffs $13,853.40 consisting of $8,190.40 Pension Trust contributions owed by the Defendant and $5,663.00 consisting of Health and Welfare contributions owed by Defendant.

6. The Court awards Plaintiffs interest at a rate of five percent computed from the day following the due date of each delinquent monthly contribution and the Court further awards interest on the entire amount of the judgment at the rate of six per cent from the date of the entry of this judgment to the date of payment of the total amount awarded.

7. In addition to the amounts awarded in paragraphs five (5) and six (6), the Court awards to Plaintiffs and assesses against Defendant, Plaintiffs' attorneys fees in the amount of $4,617.80, said amount representing one-third of the principal amount of the judgment granted herein.

8. The Court assesses all costs of the action against Defendant.

So Ordered:
/s/ Judge J. Waldo Ackerman
Judge J. Waldo Ackerman

Dated: 3-23-77

UNITED STATES COURT OF APPEALS
For the Seventh Circuit

No. 77-1573

DISTRICT NO. 9, INTERNATIONAL ASSOCIATION OF MACHINISTS AND AEROSPACE WORKERS and JOSEPH M. COINTIN, R.B. WYNNE, JR., REV. MSGR. CARL C. POELKER, FRED SPECKMAN, EDGAR M. HAYWARD, TRUSTEES OF DISTRICT 9, I.A. of M. and A.W. PENSION TRUST and WELFARE ASSN.,	)	Appeal from the United States District Court for the Southern District of Illinois, Southern Division
Plaintiffs-Appellees,	)	
vs.	)	No. A-Civ-75-8
WILLIAM CHARLES HOUSER, d/b/a HOUSER AUTOMOTIVE,	)	J. Waldo Ackerman, Judge.
Defendant-Appellant.	)	

[January 19, 1978.]

Before SPRECHER and TONE, Circuit Judges, and GRANT, Senior District Judge*

*Senior District Judge Robert A. Grant, of the Northern District of Indiana, is sitting by designation.

O R D E R

The issue presented in this appeal is whether the district court properly granted summary judgment for plaintiffs, requiring defendant Company to pay monies and interest for employee benefit funds under two collective bargaining agreements.

I.

Plaintiffs and defendant were parties to the 1970-1973 Standard Automotive Agreement which expired on July 31, 1973. Although the Company was not a member of the employer association then negotiating a new bargaining agreement with the Union, defendant executed a letter agreement on August 8, 1973, under which defendant agreed to put into effect, effective August 1, 1973, an across-the-board thirty-five cents an hour wage increase. Defendant also agreed to "abide by any settlement made under the Automotive Dealers Agreement..." Thereafter, a new collective bargaining agreement was executed by the Union and the Automotive Dealers (1973-1976 Standard Automotive Agreement).

Plaintiffs brought suit under the provisions of 29 U.S.C. §185 alleging that defendant had violated the terms of the successive collective bargaining agreements by failing and refusing to make payments into the Pension Trust and Welfare Association on behalf of certain employees of the defendant. Defendant answered that it had signed the 1970-1973 Standard Automotive Agreement but denied that it was bound by the 1973-1976 Standard Automotive Agreement, and denied that it was obligated to make any payments either for Pension or Health and Welfare Benefits. The Company claimed that any obligation it may have had ended with the expiration of the 1970-1973 Standard Auto Agreement. The Company also

contested the district court's jurisdiction because there was no collective bargaining agreement presently in effect between the parties, arguing further that if such a collective bargaining agreement was found to exist the Union had failed to exhaust its contractual remedies before instituting litigation.

Plaintiffs and defendant both moved for summary judgment and submitted memoranda, affidavits and other documents in support thereof. On February 15, 1977, the district court entered an order granting plaintiffs' summary judgment motion and denying defendant's motion. This order was modified on March 14, 1977, and finally entered on March 23, 1977. Defendant appeals and our jurisdiction derives from 28 U.S.C. §1291.

II.

The main issue presented is whether defendant was bound by the terms of the 1973-1976 Standard Automotive Agreement. Based on the letter agreement of August 8, 1973, the answer to this question must be that the Company agreed to the subsequent settlement between the Union and the Automotive Dealers Association which resulted in the 1973-1976 Standard Auto Agreement. The Company does not deny that it signed the letter agreement. Rather, it argues that the National Labor Relations Board held in a related dispute that it was not bound by the 1973-1976 Standard Auto Agreement. Thus, the defendant claims that it owes no contributions under Articles XXXIV and XXXV of that Agreement for Health and Welfare or Pension benefits.

In order to resolve this dispute, we must consider the conclusions of the Board and their effect on this case. The Union had filed an

unfair labor practice charge against the Company alleging that the Company refused to bargain in good faith in violation of 29 U.S.C. §§158(a)(1) and (5) by bypassing the Union and dealing unilaterally with unit employees. The Company claimed, inter alia, that it had an objective good faith doubt as to the Union's majority status.

Although the Board, through an Administrative Law Judge, found that much of the unilateral dealing charge was unsupported, the Board did rule that the presumption of the Union's majority status, which followed from prior contractual relations, remained unrebutted. The Board stated:

> Most significant, if not determinative, on the issue of good-faith doubt is respondent's voluntary acceptance and signing of the "letter-agreement" presented to it on August 8, 1973 — only a week after the last contract expired. Respondent thereby undertook to "continue to operate under the provisions of the [expired] 1970-1973 Agreement" with Machinists. It also agreed "to abide by any settlement" to be reached by Machinists and the Employer Association in pending negotiations and, in the interim, to put in effect a 35-cent across-the-board hourly increase — which it implemented faithfully. These actions do not depict an employer in doubt as to the Union's majority status. The presumption flowing from its past contractual relations with Machinists was enhanced by the execution of the new agreement. Even if previously quiescent, Respondent's action operated not only formally to renew or extend, but also to

> breathe new life into the technically expiring formal contractual relationship.

Further, in footnote 29, the Board declared:

> Contrary to Respondent's contention, the letter-agreement is more than an "interim wage adjustment" and "agreement to agree in the future." The instrument expressly bound the parties to follow and apply the contract to be concluded by the Union and Employer Association — a not unusual procedure in dealings with "independents" like Respondent. In any event, Respondent's contention that the letter-agreement is not "enforceable" under "basic contract law" is unsound. It has, moreover, repeatedly been pointed out that the strict rules governing "ordinary contracts" do not necessarily apply to collective labor agreements. John Wiley & Sons, Inc. v. Livingston, 376 U.S. 543, 550.

While these statements regarding the contractual relations between the parties were not necessary for the Board's decision and are not controlling upon us, they certainly support the conclusion of the district court that defendant agreed to be bound by the 1973-1976 Standard Automotive Agreement. Defendant, however, points out that the Board, in its remedy, merely required the Company "[u]pon request, to meet and bargain with the ... Union as the exclusive representative of all employees in the appropriate bargaining unit, and embody in a signed agreement any understanding reached." Thus, the Company

claims that it was not required to execute or follow the 1973-1976 Standard Automotive Agreement.

While not without ambiguity, we think that the Board's Decision and Order may be read as having concluded that defendant, by its own acts in signing the letter agreement of August 8, 1973, was bound to follow the terms of the 1973-1976 Standard Automotive Agreement. Indeed, since the Board viewed that the Company was already bound by this Agreement, there was no necessity to require the Company to execute it. Thus, the only real remedy the Board saw necessary was to require the Company to deal with the Union, not the individual employees, with regard to all future contracts.

Defendant points to a later letter written by the Regional Director of the NLRB refusing to issue a complaint against defendant for failure to bargain with the Union. The Regional Director found that the Company had not refused to negotiate since the Union had not requested any negotiations. In passing on this issue, the Regional Director interpreted the previous Board Order to mean that the defendant was not required to execute or implement the 1973-1976 Standard Automotive Agreement, although this interpretation was not necessary to the conclusion reached.

While we agree that the original Board Order did not require execution of the 1973-1976 Agreement, we conclude, as stated previously, that this is because the Board viewed the Company as already bound by that Agreement by its act of signing the letter-agreement of August 8, 1973. Insofar as the letter of the Regional Director indicates that the Company is not bound

by the 1973-1976 Agreement, we decline to accept this interpretation. In any case, neither the Board nor the Regional Director were squarely faced with the issue presented here. Therefore, upon independent determination, we hold that the defendant is bound by the terms of the 1973-1976 Standard Automotive Agreement.

III.

Insofar as we conclude that a collective bargaining agreement existed between the Company and the Union, we hold that, contrary to the defendant's contention, the district court did not lack jurisdiction to hear the controversy under 29 U.S.C. §185. Moreoever, plaintiffs need not have submitted this dispute to arbitration even though Article VIII of the Agreement contains an arbitration clause. This remedy was supplemented by a more specific provision in both Articles XXXIV and XXXV, providing that a suit at law may be brought in addition to all other remedies where there has been a failure to pay Health and Welfare or Pension benefits. Under these circumstances, arbitration was not required and plaintiffs did not fail to exhaust their contractual remedies before instituting litigation.

Finally, defendant argues that the district court should have issued a Memorandum Opinion and made findings of fact and conclusions of law. We disagree and Rule 52(a) of the Federal Rules of Civil Procedure specifically exempts summary judgment decisions under Rule 56 from the requirement that findings of fact and conclusions of law shall be issued.

IV.

Plaintiffs request attorneys' fees in addition to the one-third of the judgment required

as the minimum in the collective bargaining agreement and granted by the district court. We adhere to the award of the district court and conclude that the attorneys' fees granted are sufficient.

Accordingly, for the reasons discussed above, the March 23, 1977, decision of the district court granting plaintiffs' motion for summary judgment and denying defendant's motion for summary judgment is in all respects AFFIRMED.

UNITED STATES COURT OF APPEALS
For The Seventh Circuit

No. 77-1573

DISTRICT NO. 9, INTER-NATIONAL ASSOCIATION OF MACHINISTS AND AERO-SPACE WORKERS and JOSEPH F. COINTIN, et al.,	)	Appeal from the United States District Court for the Southern District of Illinois Alton Division.
Plaintiffs-Appellees,	)	
vs.	)	
HOUSER AUTOMOTIVE, d/b/a Charles Houser,	)	No. A-CIV-75-8
Defendant-Appellant.	)	J. Waldo Ackerman, Judge.

[January 19, 1978.]

Before SPRECHER and TONE, Circuit Judges, and GRANT, Senior District Judge*

Unpublished Per Curiam Order

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Illinois,

---

* Senior District Judge Robert A. Grant, of the Northern District of Indiana, is sitting by designation.

Alton Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, AFFIRMED, with costs, in accordance with the order of this court entered this date.

STATUTES INVOLVED

National Labor Relations Act

(61 Stat. 136, 73 Stat. 519
29 U.S.C. Sec. 151, et seq.)

Sec. 3(d), 29 U.S.C. §153(d):

There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than trial examiners and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10, and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law. In case of a vacancy in the office of the General Counsel the President is authorized to designate the officer or employee who shall act as General Counsel during such vacancy, but no person or persons so designated shall so act (1) for more than forty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine dine of the session of the Senate in which such nomination was submitted.

Sec. 8(a)(1) 29 U.S.C. §158(a)(1):

(a) It shall be an unfair labor practice for an employer—

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 [29 U.S.C. §157].

Sec. 8(a)(5), 29 U.S.C. §158(a)(5):

(a) It shall be an unfair labor practice for an employer—
(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a) [29 U.S.C. §159 (a)].

Sec. 10(a), 29 U.S.C. §160(a):

The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8 [29 U.S.C. §158]) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominantly local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act [29 U.S.C. §§151-158, 159-168] or has received a construction inconsistent therewith.

Sec. 10(c), 29 U.S.C. §160(c):

The testimony taken by such member, agent, or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its

discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without back pay, as will effectuate the policies of this Act: Provided, That where an order directs reinstatement of an employee, back pay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: And provided further, That in determining whether a complaint shall issue alleging a violation of section 8(a)(1) or section 8(a)(2), and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any back pay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an examiner or examiners thereof, such member, or such examiner

or examiners, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become effective as therein prescribed.

Sec. 10(d), 29 U.S.C. §160(d):

Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

Sec. 10(e), 29 U.S.C. §160(e):

The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceedings, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and

and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such addititonal evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

Sec. 10(f), 29 U.S.C. §160(f):

Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

Sec. 301(a), 29 U.S.C. §185(a):

Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor

organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.